



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/169804

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 31, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the total amount of \$10,695.14 for the period of June 2, 2013 – February 28, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 23, 2013, the Petitioner completed a renewal for child care benefits. Petitioner reported her employment with [REDACTED] with a start date of February 7, 2013. She reported her regular pay as 80 hours/pay period @ \$10.50/hour.
3. On May 1, 2013, the agency received an employer verification reporting that the Petitioner works 40 hours/week @ \$10.50/hour. No bonus or commission was reported.
4. On May 7, 2013, the agency issued a Notice of Eligibility to the Petitioner informing her that she was eligible for child care benefits effective May 1, 2013 based on monthly gross income of \$1,806. The notice also informed her of the requirement to report any changes that could affect eligibility within 10 calendar days.
5. On October 31, 2013, the Petitioner completed a renewal for child care benefits. She reported no change in her earned income from [REDACTED].
6. On November 7, 2013, the agency received pay statements for the Petitioner from [REDACTED] for the pay periods of September 21, 2013 – October 4, 2013 and October 5, 2013 – October 18, 2013 with gross earned income from regular pay of \$816.12 and \$833.97 respectively. No bonus or commission pay is reported on the pay statements.
7. On November 8, 2013, the agency issued a Notice of Eligibility to the Petitioner informing her that she was eligible for child care benefits effective December 1, 2013 based on monthly gross income of \$1,717.27. The agency issued a Notice of Eligibility to the Petitioner informing her that she was eligible for child care benefits effective December 1, 2013 based on monthly gross income of \$1,717.27. The notice also informed her of the requirement to report any changes that could affect eligibility within 10 calendar days.
8. On March 4, 2014 and July 21, 2014, the Petitioner completed renewals for child care benefits. She reported no changes in her earned income from [REDACTED] in March, 2014. She reported a change in her hours and rate of pay with [REDACTED] on July 21, 2014 to 76.07 hours/pay period @ \$12.35/hour.
9. On July 30, 2014, the agency received pay statements for the Petitioner from [REDACTED] for the pay periods of June 14, 2014 – June 27, 2014 and June 28, 2014 – July 11, 2014 with gross earned income from regular pay of \$906.70 and \$988.39 respectively. No bonus or commission pay is reported on the pay statements.
10. On September 17, 2014, the Petitioner completed a renewal for child care benefits. She reported earned income from [REDACTED] of 80 hours/week @ \$12.34 regular pay and .69 hours/week @ \$15.51 overtime pay.
11. On October 10, 2014, the agency received pay statements for the Petitioner from [REDACTED] for the pay periods of August 23, 2014 – September 5, 2014 and September 6, 2014 – September 19, 2014 with gross earned income from regular pay of \$1,002.52 and \$1,047.87 respectively. No bonus or commission pay is reported on the pay statements.
12. On October 3, 2014, the agency issued a notice of child care eligibility to the Petitioner informing her that she was eligible for child care benefits effective October 1, 2014 based on monthly gross earned income of \$2,122.48. The notice also informed her of the requirement to report any changes that could affect eligibility within 10 calendar days.
13. On March 5, 2015, the Petitioner completed a Six Month Report Form. She reported earned income from [REDACTED] of 80 hours/pay period at \$12.34/hour.
14. In September, 2015, the agency received wage information for the Petitioner from The Work Number reporting that the Petitioner has received bonus and commission pay from [REDACTED] since March 29, 2013.

15. On October 7, 2015, the agency received pay statements for the Petitioner from [REDACTED] for the pay periods of January 24, 2015 – February 5, 2015 and February 7, 2015 – February 20, 2015. The pay statements report regular pay as well as bonus and commission pay.
16. On October 23, 2015, the agency issued child care client overpayment notices to the Petitioner informing her that the agency intends to recover overissuances of child care benefits in the total amount of \$10,695.14 for the period of June 2, 2013 – February 28, 2015 due to the Petitioner not reporting income.
17. On October 31, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

In this case, the Petitioner concedes that she did not report any bonus or commission pay that she earned from [REDACTED]. She testified that she didn't start out getting commissions from [REDACTED] and was not aware that she was required to report them. She stated that she did not understand the program income limits. She testified that she felt she was doing what she was required to do when she submitted pay statements. The bonus and commission pay statements were separate from regular pay statements until the end of 2015.

The Petitioner does not dispute the agency's calculation of her earned income for purposes of calculating the overpayment.

I have reviewed the evidence submitted by the agency of the Petitioner's earned income, including bonus and commission income. I have reviewed the agency's evidence of the child care benefits paid out on behalf of the Petitioner during the overpayment period. I have reviewed the agency's calculations of the overpayment. I find no error in the agency's calculations.

Based on the evidence provided, I conclude that the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$10,695.14 for the period of June 2, 2013 – February 28, 2015.

Though I am upholding the overpayment action, I am remanding this matter to the agency to revise the overpayment notices. The notices state that the overpayment is due to an intentional program violation. In a related but separate matter designated as DHA Case No. [REDACTED], I found that the Petitioner did not commit an intentional program violation when she did not report her bonus and commission income. Therefore, the notices must be revised to indicate that the overpayment is due to client error.

**CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$10,695.14 for the period of June 2, 2013 – February 28, 2015 due to client error in not reporting bonus and commission income.

**THEREFORE, it is**

**ORDERED**

That, as to the overpayment itself, including the overpayment period and the amount of the overpayment, the Petitioner's appeal is dismissed.

The matter is remanded to the agency to revise the overpayment notices for Claim # [REDACTED] and Claim # [REDACTED] to reflect that the overpayment is due to client error and not due to intentional program violation. This action shall be completed within 10 days of the date of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 8, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney [REDACTED]